

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
Norbert Heske, et al. ) Group: 3736  
Serial No.: 10/549,820 )  
Filed: September 20, 2005 )  
Title: COAXIAL CANNULA PROVIDED WITH A )  
SEALING ELEMENT ) Examiner: M. Stout

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the three-way restriction requirement in the Office Action dated May 16, 2008, which period has been extended by the enclosed Petition for Extension of Time to expire on August 16, 2008, Applicants hereby elect with traverse the invention recited in Group 1, claims 1-4, considered by the Examiner to be directed to a biopsy device, in the above-identified application.

The Examiner asserts that there is clear lack of unity of the invention because the common subject matter of the claims is well know and the remaining subject matter differs from that of the others without there being any unifying novel inventive concept. Applicants respectfully disagree, and request reconsideration in view of the following.

It is respectfully submitted that while the three sets of claims (Groups 1, 2, and 3) may differ in form, the three groups of claims share common novel aspects, such as in the form of a cannula having a seal contacting an inner tube (specimen separating device) and configured to

facilitate: a release of the air outlet at the seal (claim 1), opening of the seal (claim 5), and breaking the seal (claim 9), in the process of venting the cannula, such as during insertion of the inner tube (needle unit) into the outer tube.

Applicants further respectfully disagree with the comments made by the Examiner in the present restriction requirement with respect to Ouchi (U.S. Patent No. 6,514,215), particularly with respect to the assertion that the Ouchi seal element enables escape of air as the needle is inserted. Should the Examiner desire to reject any of the claims based on Ouchi, Applicants will provide a more detailed explanation.

Further, it is respectfully submitted that it is reasonable that claims 1-9 should be examined together, since it is not believed that the examination of claims 5-9 with claims 1-4 would necessitate a new search.

Accordingly, it is respectfully requested that the three-way restriction requirement be withdrawn, and that examination on the merits proceed in due course.

In the event Applicants have overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby conditionally petition therefor and authorize that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Should any questions concerning the foregoing arise, the Examiner is invited to contact the undersigned at (317) 894-0801.

Respectfully submitted,

/Ronald K. Aust, Reg. No. 36735/

Ronald K. Aust  
Registration No. 36,735  
Attorney for Applicants

RKA/ts

TAYLOR & AUST, P.C.  
12029 E. Washington Street  
Indianapolis, IN 46229  
Telephone: 317-894-0801  
Facsimile: 317-894-0803

**Electronically Filed: July 31, 2008**